

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION

HONORABLE JOHN W. HOLCOMB, U.S. DISTRICT JUDGE

ENTROPIC COMMUNICATIONS, LLC,)
Plaintiff,) Case No.
vs.) 2:22-cv-07775-JWH-JEM
DISH NETWORK CORPORATION, et al.,) Related Cases:
Defendants.) 2:23-cv-01043-JWH-KES
) 2:23-cv-01049-JWH-KES
) 2:23-cv-01048-JWH-KES
) 2:23-cv-01050-JWH-KES
) 2:23-cv-01047-JWH-KES

REPORTER'S TRANSCRIPT OF PROCEEDINGS
MOTION HEARING
FRIDAY, JUNE 9, 2023
9:05 A.M.
SANTA ANA, CALIFORNIA

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SANTA ANA, CALIFORNIA; FRIDAY, JUNE 9, 2023

9:05 A.M.

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09:05AM 5 THE COURTROOM DEPUTY: Calling Item Number 1,
6 Entropic Communications vs. DIRECTV, LLC, et al.; Entropic
7 Communications, LLC vs. DISH Network Corporation, et al.;
8 Entropic Communications, LLC vs. Cox Communications, Inc.,
9 et al.; and Entropic Communications, LLC vs. Comcast
09:05AM 10 Corporation, et al. Case Numbers 22-0775-JWH, 23-01043-JWH,
11 23-01047-JWH, 23-01048-JWH, 23-01049-JWH, 23-01050-JWH.

12 Counsel, would you please state your appearances,
13 beginning with the plaintiff.

14 MR. SHIMOTA: Jim Shimota appearing on behalf of
09:06AM 15 Plaintiff Entropic.

16 MS. GOODRICH: Good morning, Your Honor. Christina
17 Goodrich, K&L Gates, for plaintiff.

18 THE COURT: All right. Mr. Shimota and
19 Ms. Goodrich, good to see you. Good morning.

09:06AM 20 MR. SHIMOTA: Good to see you, Your Honor.

21 MR. MARCHESE: Good morning, Your Honor. Chris
22 Marchese from Fish & Richardson on behalf of the DISH
23 defendants in the 1043 case.

24 THE COURT: Hold on one second. That was in the
09:06AM 25 MOCA case?

1 MR. MARCHESE: Correct, Your Honor.

2 THE COURT: Mr. "Marchese," is that the correct
3 pronunciation?

4 MR. MARCHESE: It is correct. Thank you.

09:06AM 5 THE COURT: I will undoubtedly forget it, but
6 correct me if I do.

7 MR. MARCHESE: Thank you.

8 MS. KAMRAN: Good morning, Your Honor. Sarah Kamran
9 from Kilpatrick Townsend representing the Cox defendants.

09:07AM 10 THE COURT: Hold on a second. Ms. Kamran; right?

11 MS. KAMRAN: Yes.

12 THE COURT: K-a-m-r-a-n?

13 MS. KAMRAN: Yes, Your Honor.

14 THE COURT: All right. Good morning, Ms. Kamran.

09:07AM 15 MS. KAMRAN: Good morning.

16 MR. BERNSTEIN: Good Morning, Your Honor. Matthew
17 Bernstein from Perkins Coie for the DISH defendants in the 7775
18 case.

19 THE COURT: Okay. Mr. -- let me find you. Sorry.

09:07AM 20 There we go. Mr. Bernstein. Am I pronouncing that properly?

21 MR. BERNSTEIN: Correct.

22 THE COURT: Mr. Bernstein, good morning.

23 MR. PADMANABHAN: Good morning, Your Honor.

24 Krishnan Padmanabhan of Winston & Strawn on behalf of Comcast
09:08AM 25 in the 1048 and 1050 cases.

1 THE COURT: Good to see you again. And help me
2 again with the pronunciation of your name, please.

3 MR. PADMANABHAN: Sure. "Padmanabhan."

4 THE COURT: "Padmanabhan"?

09:08AM 5 MR. PADMANABHAN: Perfect.

6 THE COURT: I'll probably botch it, but I'll do my
7 best. Good to see you.

8 All right. Counsel, thank you all for being here
9 today. I'm going to deal with the Local Rule 7.1-1 motion
09:08AM 10 momentarily. Let me kind of deal with all of the housekeeping
11 issues that are out there first.

12 I set this status conference because last time we
13 were all here, I think back on April 21st, we had discussed
14 consolidation and the appointment of a special master. And I
09:09AM 15 was under the impression that counsel were going to get
16 together and provide to me proposed orders consolidating the
17 MOCA cases and the cable cases and, also, in all the cases, a
18 proposed order appointing a special master.

19 So I got the -- when I did not receive those
09:09AM 20 proposed orders, I set this status conference because I did not
21 want that to go by the wayside, those two issues.

22 Now, you have since, in the MOCA cases and the cable
23 cases, I believe, filed the proposed order appointing
24 Mr. Keyzer -- am I pronouncing his name properly? Okay.
09:10AM 25 Everybody's nodding -- Mr. Keyzer as the special master. I did

1 not see a proposed order in the satellite cases.

2 What's the status, Ms. Goodrich?

3 MS. GOODRICH: Thank you, Your Honor. We need to
4 circulate the draft declaration to Mr. Keyzer in that case.

09:10AM 5 And I believe we're in agreement on the stipulation itself. So
6 once we get the signed declaration from Mr. Keyzer, that --
7 we'll submit that, which hopefully will be early next week at
8 the latest.

9 THE COURT: All right. So what I'm going to do on
09:10AM 10 the special master is wait until I receive that, because if
11 there's a hitch, I want the same special master in all these
12 cases. I think it would be pretty inefficient, for a lot of
13 reasons, if we have different special masters in the different
14 cases.

09:10AM 15 So as soon as I receive that stipulation in the
16 satellite cases, I intend to enter those proposed orders.

17 One thing on the form of the proposed order, I think
18 I referred you to another case where I appointed a special
19 master. There were some special bells and whistles in that
09:11AM 20 case. I didn't mean that you had to slavishly follow that
21 pattern, but I assumed it was acceptable because you submitted
22 it to me.

23 Correct, defendants, in the MOCA and cable cases ?

24 MR. MARCHESE: Yes, Your Honor. That's correct for
09:11AM 25 the 1043 case with DISH.

1 THE COURT: Okay.

2 MR. PADMANABHAN: Correct, Your Honor, for the 1048
3 and 1050 cases for Comcast.

4 MS. KAMRAN: Yes, Your Honor, that's correct for the
09:11AM 5 1049 and 10- -- or -47 cases for Cox.

6 THE COURT: Good enough. Thank you.

7 Now on consolidation, I already consolidated the
8 satellite cases. When we talked about this back in April, the
9 issue was parties -- I think Entropic wanted to see what the
09:11AM 10 answers and defenses looked like before putting the bells and
11 whistles on a consolidation order.

12 Now some answers have been filed. I've got
13 12(b)(6), 12(b)(1) motions from some defendants in the MOCA and
14 cable cases. We'll talk about those in more detail in a
09:12AM 15 minute. But where are we on consolidation?

16 I guess let me hear from Entropic first. This is,
17 of course, on the MOCA and cable cases.

18 MS. GOODRICH: Yes, Your Honor. The parties still
19 agree on consolidation through Markman. I invite defendants to
09:12AM 20 weigh in on that, of course. And we had all agreed to discuss
21 the bells and whistles of what specifically would be done
22 jointly in connection with our Rule 26.

23 And so right now, that is scheduled. We're working
24 on conducting the conference of counsel on the 22nd or 23rd of
09:12AM 25 June. And in connection with that, we will be circulating our

1 portion of the joint report, which contains our proposal on the
2 consolidation.

3 And we do take Your Honor's comment during the last
4 hearing to heart in terms of agreeing, as much as possible, so
09:13AM 5 that the consolidation order does not have competing arguments
6 in it.

7 THE COURT: Okay. Anybody else care to comment?
8 You don't have to.

9 MR. MARCHESE: I will comment, Your Honor. Chris
09:13AM 10 Marchese from Fish & Richardson for DISH.

11 We are in agreement with what Ms. Goodrich said. We
12 do expect to work with them on the bells and whistles in
13 connection with the 26(f) meeting, which is coming up here in a
14 little bit. And we also expect to agree as much as possible on
09:13AM 15 issues.

16 MR. PADMANABHAN: Same for Comcast, Your Honor.

17 MS. KAMRAN: Same for Cox, Your Honor.

18 THE COURT: Okay. So what I'm hearing is I should
19 just stand by and get the Rule 26(f) reports and, hopefully, a
09:13AM 20 stipulation for consolidation, and if not, then competing
21 proposals and I can pick one. But you prefer that I wait until
22 we get to that point for me to consolidate. Concur?

23 MS. GOODRICH: Yes, Your Honor.

24 MR. PADMANABHAN: Yes, Your Honor.

09:14AM 25 MS. KAMRAN: Yes, Your Honor.

1 MR. MARCHESE: Yes, Your Honor.

2 THE COURT: All right. Probably hard for the court
3 reporter to keep track of all this. But thank you.

4 All right. Let me turn to -- I mentioned the
09:14AM 5 12(b)(1) and 12(b)(6) motions. Comcast has filed those in the
6 MOCA and cable cases. And then Entropic filed a First Amended
7 Complaint. I did not deeply analyze whether the First Amended
8 Complaint mooted -- well, I think it necessarily moots them,
9 but did it address the issues that Comcast raised in its
09:14AM 10 12(b)(1) and 12(b)(6) motions, or will they be renewed, in a
11 sense?

12 MR. PADMANABHAN: So, Your Honor, we've actually had
13 an opportunity to discuss. So we plan to refile our motions.
14 We don't think any of the allegations address either the
09:15AM 15 12(b)(1) or the 12(b)(6), and so we're going to work together
16 on that. And we have a meet and confer scheduled for Monday.
17 And we'll be responding with the renewed motions.

18 THE COURT: Okay.

19 MS. GOODRICH: Our position, unsurprisingly, is that
09:15AM 20 our Amended Complaints do address what was raised in the
21 12(b)(1) and 12(b)(6), but we are meeting and conferring on
22 Monday to go over the basis for the renewed motions.

23 THE COURT: Okay. Well, I'll see how that plays
24 out. Since there is a First Amended Complaint, the Cox
09:15AM 25 entities, they're going to file an Answer to that? Or do you

1 know how you're going to respond?

2 MS. KAMRAN: I think that we are still deciding,

3 Your Honor.

4 THE COURT: Okay. All right. I was happy to see
09:16AM 5 that it was just an answer and not a 12(b) motion. But we'll
6 see what happens. Okay. Thank you for that update.

7 So Madam Clerk, a couple of things. The filing of
8 the First Amended Complaint in the MOCA cases and the cable
9 cases, I think does moot the pending motions to dismiss that
09:16AM 10 Comcast has filed in those cases, specifically in 23-1048. Our
11 docket -- because portions of these motions were filed under
12 seal, sometimes they come up as two or more ECF numbers. But
13 Madam Clerk, I think ECF numbers -- so I'm looking at 23-1048.
14 ECF numbers 43, 51, 55, and 58 and 60, I think they're all
09:17AM 15 mooted.

16 Mr. Padmanabhan, concur?

17 MR. PADMANABHAN: Your Honor, I wish I could check
18 the numbers as quickly as you had laid them out. The numbers
19 sound correct to me, but correct, there should be two motions
09:17AM 20 for each. There's a 12(b) -- or two docket entries for the
21 12(b)(6) and 12(b)(1). And so those would all be mooted. And
22 we will be renewing the motions in light of the First Amended
23 Complaint.

24 THE COURT: So sticking with the 1048 case, for some
09:17AM 25 reason, we have five motions identified as awaiting resolution.

1 I think there probably should be four.

2 MR. PADMANABHAN: Yes, Your Honor. I can respond to
3 that. I think there was something that had been -- we had
4 marked it confidential, but the table of contents, something
09:18AM 5 had been left unredacted. So we fixed that with a new docket
6 entry.

7 THE COURT: So there was, like, a corrected --

8 MR. PADMANABHAN: Yeah, exactly.

9 THE COURT: Okay. So Madam Clerk, those five ECF
09:18AM 10 numbers had been resolved through plaintiff's filing of a First
11 Amended Complaint. So our minute order should reflect that.

12 Do you need those again?

13 THE COURTROOM DEPUTY: I've got them. Thank you.

14 THE COURT: Okay. And the same is true with respect
09:18AM 15 to 23-1050. I think there were only four docket numbers -- 40,
16 48, 52, and 57 -- that have been resolved, that have been
17 mooted by the filing of the First Amended Complaint. So our
18 minute order memorializing this hearing should reflect that.

19 Madam Clerk, do you need them again?

09:19AM 20 THE COURTROOM DEPUTY: I got it. Thank you.

21 THE COURT: Okay. Now, there are also pending
22 stipulations to continue the scheduling conference in the MOCA
23 and cable cases, which is presently set for June 30th. And I
24 understand -- I forgot who, but somebody was going to be out of
09:19AM 25 town or something. And for that reason, all the parties wanted

1 to continue those scheduling conferences. And that's fine with
2 me.

3 Remind me what date you wanted them continued to.

4 MS. GOODRICH: Your Honor, July 21st.

09:20AM 5 MR. PADMANABHAN: That was the date we all ended on,
6 based on the conflicts, yes.

7 MR. MARCHESE: Yes, for DISH. That's correct,
8 July 21st.

9 THE COURT: Okay. The minute order will also
09:20AM 10 reflect that the parties' respective -- stipulations to
11 continue the respective scheduling conferences are approved,
12 and the scheduling conferences in the MOCA and cable cases are
13 moved to July 21st -- at 11:00 o'clock? We'll say
14 11:00 o'clock for right now. That's when I usually have
09:20AM 15 scheduling conferences.

16 Now, so because we've now moved the scheduling
17 conferences and they're no longer on the 30th, and we've taken
18 care of the 12(b)(1) and 12(b)(6) motions, I think what we
19 still have on the 30th is a hearing -- let's see. Is it in the
09:21AM 20 MOCA case to -- filed by DISH --

21 MR. MARCHESE: Yes, Your Honor.

22 THE COURT: -- the 101 motion?

23 MR. MARCHESE: Yes. We -- excuse me. I didn't mean
24 to interrupt you.

09:21AM 25 THE COURT: No, go ahead.

1 MR. MARCHESE: In the 1043 MOCA case with DISH, we
2 have one 101 motion pending on two patents. It is currently
3 scheduled, based on Your Honor's order a few days ago, pushing
4 it to the 30th of June. We would -- we haven't discussed this
09:21AM 5 yet with the Entropic team, but we would be willing to hold
6 that altogether on the 21st with the scheduling conference.

7 THE COURT: That's where I was going.

8 Ms. Goodrich? Is it a problem?

9 MS. GOODRICH: No problem here, Your Honor.

09:22AM 10 THE COURT: Okay. So the minute order will also
11 continue the hearing on DISH's 101 motion from June 30th to
12 July 21st at 11:00 a.m.

13 Now, I had some -- the reason we're not having that
14 hearing today is because I wanted some additional briefing on a
09:22AM 15 proposed claim construction from Entropic and then a response.

16 The briefing on that -- that claim construction briefing, that
17 supplemental briefing, is a little tight because I wanted to
18 fit this in -- fit the hearing in by the 30th.

19 Now that we're relaxing the schedule a bit, in terms
09:22AM 20 of the hearing, do you want to relax also the briefing?

21 MS. GOODRICH: I'm all for relaxing the briefing,
22 Your Honor.

23 MR. MARCHESE: We do not object, Your Honor.

24 THE COURT: Okay. I had set Entropic's supplemental
09:23AM 25 brief to be filed on June 16th and DISH's responsive brief for

1 June 30th. So since we have July 21st now as the hearing date,
2 if I give myself two weeks to review all that supplemental
3 briefing, that would mean -- how about the responsive brief
4 from DISH due July 7th and Entropic's brief due June 30th? How
09:24AM 5 does that work?

6 MR. MARCHESE: Your Honor, if I may, we would
7 receive their brief over the holiday weekend. Wonder if we can
8 have a little bit more time for our responsive brief.

9 THE COURT: You've got the 4th of July issue.

09:24AM 10 MR. MARCHESE: Correct. I think if they file on the
11 30th, then the 4th is falling on that Tuesday.

12 THE COURT: Right. Well, what if we do --

13 Ms. Goodrich, how about the 23rd?

14 MS. GOODRICH: That works, Your Honor.

09:24AM 15 THE COURT: How about the 26th? I'll give you the
16 weekend.

17 MS. GOODRICH: I would appreciate that.

18 THE COURT: Okay. So Entropic's supplemental brief
19 pertaining to the -- this 101 motion, which is ECF 50 in the
09:24AM 20 1043 case, one of the MOCA cases, Entropic's supplemental brief
21 is -- the deadline is continued to June 26th, and DISH's
22 responsive brief, the deadline is continued to July 7th.

23 Okay with everybody?

24 MS. GOODRICH: Thank you, Your Honor.

09:25AM 25 MR. MARCHESE: Thank you, Your Honor.

1 THE COURT: And I think I said it, but the hearing
2 is continued to July 21st.

3 All right. We still have the technology tutorial in
4 the satellite cases coming up on Tuesday, June 27th; correct?

09:25AM 5 MR. SHIMOTA: That's correct, Your Honor.

6 THE COURT: I'm looking forward to that. Seriously.
7 I'm not being facetious.

8 MR. SHIMOTA: We are as well, Your Honor.

9 THE COURT: All right. So we now have nothing set
09:26AM 10 for the 30th. We have the technology tutorial on June 27th, as
11 I just said. Claim construction hearing in the satellite
12 cases, July 11th. And scheduling conferences and hearings on
13 various motions set for July 21st.

14 Everybody concur? You can just nod.

09:26AM 15 **(No audible response.)**

16 THE COURT: Okay. Everybody concurs.

17 And on August 25th, we have the hearing in the MOCA
18 cases on -- let's see. I think that's DISH's motion to dismiss
19 the case for improper venue?

09:26AM 20 MR. MARCHESE: Yes, Your Honor. Three of the DISH
21 defendants have filed for improper venue, and the hearing is on
22 the 25th.

23 THE COURT: Of August?

24 MR. MARCHESE: Of August, correct.

09:27AM 25 THE COURT: Okay. All right. That's everything

1 that I have sort of housekeepingwise on all of these motions,
2 except, of course, for the hearing on the -- DISH's motion to
3 compel compliance in the satellite cases.

4 What else, before I turn to that motion?

09:27AM 5 MS. GOODRICH: Nothing from Entropic, Your Honor.

6 MR. MARCHESE: Nothing from DISH in the 1043 case,
7 Your Honor.

8 MS. KAMRAN: Nothing from Cox, Your Honor.

9 MR. PADMANABHAN: Your Honor, nothing from Comcast
09:27AM 10 for the Court to decide, but hearing the scheduling discussion,
11 we may discuss offline. Right now we're scheduled to respond
12 to their First Amended Complaint on the 19th. And we'll meet
13 and confer on Monday, but we may want to discuss scheduling on
14 our briefing, given the July 4th holiday, similarly, for
09:28AM 15 Comcast in the 12(b)(1) and 12(b)(6).

16 THE COURT: It looks like, if you file on time, you
17 could make the July 21st hearing date.

18 MR. PADMANABHAN: That was our intention presently,
19 if that's okay with Your Honor.

09:28AM 20 THE COURT: That seems like a good thing for me, in
21 the sense that I'll have everything on the same day. And
22 perhaps for you as well, because you all -- you travel here on
23 the same day, get everything accomplished all at once.

24 MR. PADMANABHAN: That sounds great, Your Honor.

09:28AM 25 THE COURT: So I don't know if you want to respond,

1 Ms. Goodrich. You don't have to.

2 MS. GOODRICH: I would just like to see the motion
3 first. There was concern that there may be a need for
4 discovery on the 12(b) (1). And so until we see the motion and
09:28AM 5 whether it's changed substantially from the prior motion,
6 whether we would ask for additional time, that's all.

7 THE COURT: Okay. Well, I'll leave it to you. Meet
8 and confer. And in a perfect world, I'd like to have the
9 hearing on the 21st. If that doesn't work, if you want to file
09:29AM 10 a stipulation to do something else, file it and I'll consider
11 it.

12 MR. PADMANABHAN: No, Your Honor. We appreciate
13 guidance like that. So that's great.

14 THE COURT: Okay.

09:29AM 15 MR. PADMANABHAN: We'll be ready to go on the 21st.
16 Thank you.

17 THE COURT: Okay. So I think that takes care of all
18 of the so-called housekeeping issues on scheduling with all the
19 cases. And I think all I have left is argument on the motion
09:29AM 20 to compel compliance in the satellite cases.

21 Counsel, you received my tentative; correct?

22 MR. SHIMOTA: Yes, I did, Your Honor.

23 MR. BERNSTEIN: Yes, Your Honor.

24 THE COURT: All right. So I'll tell you what I
09:29AM 25 always tell parties when I have a tentative, which is true,

1 which is it's truly a tentative. It's a little bit rough, but
2 I wanted to get it to you so you could see what I was thinking.
3 In fact, you can see that it was written as if I was going to
4 issue it without a hearing. I didn't. I forgot to take out
09:30AM 5 that line. But anyway, it got written up, and I decided no,
6 I'd really rather hear from the parties, have the hearing on
7 this as opposed to just issue this.

8 So I'm eager to hear from you, how it's incorrect.
9 Feel free to push back, please. I want to get this right.

09:30AM 10 So why don't I hear from -- why don't I hear from
11 DISH first, since I don't think you're getting in the tentative
12 precisely what you wanted; correct?

13 MR. BERNSTEIN: Not precisely. We're almost there,
14 Your Honor, but not completely.

09:30AM 15 THE COURT: Okay. My mind is open. Tell me what
16 you'd like to tell me, and feel free to push back on this
17 tentative.

18 MR. BERNSTEIN: Thank you, Your Honor. Matthew
19 Bernstein for the DISH defendants.

09:31AM 20 So before I start, I'm going to be discussing some
21 information that Entropic has deemed confidential, "attorneys'
22 eyes only." We don't believe it is. But for purposes of right
23 now, I think we're all good, but I don't know who -- I don't
24 know who this guy is. So...

09:31AM 25 THE COURT: That's -- we have one guest in the

1 courtroom, Mr. Stein, who, as far as I know, is not involved in
2 any of these cases or parties. He's a local lawyer, perhaps
3 just interested in this patent case.

4 MR. STEIN: Just in this issue, but happy to leave
5 if that helps things.

6 THE COURT: Does anybody feel the need to exclude
7 Mr. Stein?

8 MR. SHIMOTA: Your Honor, I mean, for present
9 purposes, to the extent that they're going to disclose
0 information which has been designated by third a party a
1 outside "counsel's eyes only," I --

12 THE COURT: So that's a "yes."

13 MR. SHIMOTA: That's a "yes," Your Honor. I don't
14 know exactly what Mr. Bernstein is going to argue, but --

15 MR. BERNSTEIN: I think "yes" is the right answer.

16 THE COURT: Okay. Mr. Stein, I'm very sorry. It's
17 wonderful to see you, as always.

18 THE WITNESS: Delightful to be here.

19 Good luck to you all.

20 | (Mr. Stein exits the courtroom.)

21 MR. BERNSTEIN: Thank you, Your Honor.

22 So I want to start by just going through a few of
23 the basic facts because I think it underlies the two issues.
24 And they aren't really major issues. And one of them, I think,
25 is just a point of clarification.

1 But I want to start with the language of 7.1-1
2 itself. Because I think -- through this briefing, I think
3 maybe everyone at one point or another has lost sight of really
4 the basic, simple language that says if you have a pecuniary
09:33AM 5 interest in the outcome of this litigation, whether you're a
6 person, individual, entity, you need to be disclosed in this
7 7.1-1 disclosure. It's very straightforward, from our
8 standpoint, the clear language, plain language of the
9 requirement.

09:33AM 10 And I think that's important because Entropic chose
11 to be in this court, Your Honor. They originally filed in the
12 Eastern District of Texas. We, DISH, moved to transfer to
13 Colorado. They said, "No, no, Colorado is no good." And
14 ultimately what Entropic said was, "Let's go to the Central
09:33AM 15 District of California." They picked the Central District of
16 California, knowing that the Central District of California has
17 this 7.1-1 requirement to identify anybody who has a pecuniary
18 interest.

19 So that's the first point, that they chose to be
09:33AM 20 here, Your Honor, and they chose to comply with the language of
21 7.1-1.

22 Second, Your Honor, I want to walk through the
23 ownership of the plaintiff. Entropic Communications, that's
24 the plaintiff. It's owned 100 percent by a shell company,
09:34AM 25 Entropic Holdings. It's a shell company. That's all it does.

1 It's a vehicle created by Fortress, or whoever, to ultimately
2 deliver any judgment assets to the 11 companies who actually
3 own Entropic Holdings. There's 11 member companies that own
4 Entropic Holdings.

09:34AM 5 THE COURT: And you know the identity of those 11?

6 MR. BERNSTEIN: So they have produced in the
7 litigation, it's the LLC agreement of Entropic Holdings. And
8 it lists those 11 companies, the address of those 11 companies,
9 which are all the same, Fortress in New York. And then it
09:34AM 10 identifies the percentage of ownership, which is each
11 individual company owns between less than 1 percent up to
12 50 percent. In fact, two of these companies, two of these
13 member companies, actually own over 80 percent of Entropic
14 Holdings, which is a shell company.

09:35AM 15 So from our view they, for all intents and purposes,
16 own over 80 percent of the plaintiff in this case. Indirectly,
17 but they do.

18 And that agreement, Your Honor, also sets forth that
19 any funds that are paid, a settlement, a judgment, it's paid to
09:35AM 20 these 11 member companies. There's other things involved, but
21 ultimately these member companies, the 11 owners of the shell
22 company, are paid based on their percentage of ownership of the
23 shell company. So it --

24 THE COURT: Say that last thing again.

09:35AM 25 MR. BERNSTEIN: Yes. So, for example, one of

1 these -- one of the owners, the members of Entropic Holdings,
2 the company -- one of the companies that owns Entropic Holdings
3 has a 50 percent ownership in Entropic Holdings. When there's
4 a payout, some of it will go to MaxLinear, that's unrelated.
09:36AM 5 But the payment that goes to the plaintiff goes through the
6 shell company, and then the member, the owner of the shell
7 company that owns 50 percent, gets paid based on that
8 50 percent percentage.

9 And so the -- from our standpoint, the Rule 7.1-1 is
09:36AM 10 specifically, explicitly set to identify this company -- all 11
11 of these companies should be identified. And it seems from
12 your tentative that they are going to have to identify some of
13 them, but not all of them.

14 THE COURT: So from my tentative, assuming what
09:36AM 15 you've said is true about percentage ownership, Entropic, the
16 plaintiff, would have to identify two of the private investment
17 funds, the one that owns 50 percent, you say, and the one that
18 owns, I assume, roughly 30 percent, because you said two of
19 them together are over 80 percent.

09:37AM 20 And then I assume that the other nine -- each of the
21 other nine holds less than 10 percent ownership interest in
22 Entropic Holdings, LLC; correct?

23 MR. BERNSTEIN: That's correct. That's our
24 understanding of the documents.

09:37AM 25 THE COURT: So bottom line, there would be two

1 investment funds identified?

2 MR. BERNSTEIN: Correct. Although I want to take a
3 little issue with this term "investment fund" because this is a
4 term that's used in the declaration of the guy from Entropic,
09:37AM 5 Boris Teksler. And it's a term that's been used even by some
6 other courts. But I'm not exactly sure where that came --
7 where that came from and, actually, the evidentiary support in
8 the record that these actually are investment funds, or exactly
9 what that means to be an investment fund.

09:38AM 10 THE COURT: Let me ask this question. You know the
11 identity of these 11 entities; correct?

12 MR. BERNSTEIN: The Court does not. I do,
13 Your Honor. Yes.

14 THE COURT: So what is the nature of those 11
09:38AM 15 entities? Are they, themselves, LLCs? Are they corporations?
16 Are they limited partnerships? Are they individuals?

17 MR. BERNSTEIN: They are, I believe, LLCs and LPs, a
18 combination of those two corporate -- but exactly what they're
19 doing --

09:38AM 20 THE COURT: So I want to hear that, but let me dig
21 down a little bit deeper. The so-called investment fund that
22 owns -- that is a 50 percent member of Entropic Holdings, LLC,
23 what is the nature of that entity?

24 MR. BERNSTEIN: Let me check, Your Honor. I believe
09:38AM 25 it's an LLC, but let me -- it's an LP, limited partnership.

1 THE COURT: So under the order in my tentative --
2 like I said, it's an interesting question. It's a limited
3 partnership.

4 Is not Entropic, under the tentative order,
09:39AM 5 obligated to identify individuals or entities that own
6 10 percent or more of that limited partnership?

7 MR. BERNSTEIN: Yeah, I mean -- I believe the order
8 is clear that they would have to identify this entity and the
9 other entity that owns 33 percent of the shell company,
09:39AM 10 Entropic Holdings, yes.

11 THE COURT: The entity that owns 33 percent of
12 Entropic Holdings, what's the nature of that entity?

13 MR. BERNSTEIN: So if you're just asking me the
14 corporate --

09:40AM 15 THE COURT: Yeah.

16 MR. BERNSTEIN: -- LLC?

17 What they do, anything else, what they -- we don't
18 have that information. We just have this list, Your Honor.

19 THE COURT: And do you know who -- who or what is a
09:40AM 20 10 percent or more member of that 33 percent LLC?

21 MR. BERNSTEIN: That's what we're asking from you,
22 Your Honor. We don't think your tentative -- we think your --
23 in the body of the tentative, you actually recognized this
24 issue, because that's what I think the *Intel/VLSI* Court in the
09:40AM 25 Northern District of California, they -- there's a statement, I

1 think it's in the top of page 6 of your tentative order, where
2 there was a statement from that Northern District of California
3 decision where the plaintiffs had, under oath or declaration,
4 said there were no such individuals or entities that actually
09:41AM 5 own more than 10 percent of the investment funds.

6 So we think -- and this is one of the issues I
7 wanted to clarify. We think that that's -- if we're going to
8 follow Intel in that Northern District case, we think that's
9 correct, but we think your actual order, your disposition,
09:41AM 10 should say exactly that. Your disposition order says just
11 individuals who own 10 percent or more of the shell company,
12 Entropic Holdings. It's not covering both individuals and
13 entities, and it's not covering the actual investment funds.

14 And so it's too narrow, the actual Point 2 in your
09:41AM 15 order. And we think that that should be expanded to cover any
16 individual or entity that owns 10 percent or more of any one of
17 these investment funds -- I'll use that word -- or any
18 combination of the investment funds.

19 THE COURT: So you covered one of my questions, the
09:42AM 20 sort of mathematical one. And that is -- so take, for example,
21 the -- I'll call it the 50 percent owner, the limited
22 partnership that owns 50 percent of Entropic Holdings, LLC.
23 You would advocate that if we go with a 10 percent rule, any
24 person or entity that owns more than 10 percent of that limited
09:42AM 25 partnership should be identified, as opposed to if we're

1 talking about 10 percent of the overall plaintiff,
2 mathematically, the threshold would then be 20 percent or more
3 of that 50 percent owner.

4 Do you understand what I'm saying?

09:42AM 5 MR. BERNSTEIN: I do. And that's exactly what we're
6 saying. Any --

7 THE COURT: And you want it to go 10 percent,
8 10 percent, 10 percent?

9 MR. BERNSTEIN: Correct, Your Honor.

09:42AM 10 THE COURT: So if -- I'm making this up. If there
11 was a 10 percent owner of Entropic Holdings, LLC, and some
12 individual or entity owned 10 percent of that 10 percent owner,
13 you want them identified. So they're essentially a 1 percent
14 holder. And in fact, you want 10 percent holders of that
09:43AM 15 1 percent holder identified; is that correct?

16 MR. BERNSTEIN: That -- I wouldn't characterize it
17 the way that you are, but that is effectively what we're
18 saying. From our standpoint, Entropic Holdings, it is just a
19 shell company. And so, really, what we should be looking at
09:43AM 20 are these individual -- 11 individual owners.

21 THE COURT: So you're saying 10 percent is
22 arbitrary. Let's get the -- let's get the list of persons and
23 entities, bottom line, who have a pecuniary interest in the
24 outcome of this case, however much it may be.

09:43AM 25 MR. BERNSTEIN: So that is actually what the rule

1 says, 7.1-1. This 10 percent --

2 THE COURT: So that's my next question, is I know
3 the Federal Rules of Civil Procedure says 10 percent in
4 Rule 7.1. Where does that -- historically, where does that
09:44AM 5 10 percent come from? Is there some case or what -- why the
6 magical 10 percent?

7 MR. BERNSTEIN: I actually -- I don't know off the
8 top of my head where that 10 percent came from. I think what's
9 significant here is that the -- I think the 7.1.1 or the
09:44AM 10 legislative history says that Courts can have a more strict
11 requirement or more robust identification of interested parties
12 if they want to. And this Court has chosen to not -- it's not
13 just 10 percent, it's anyone that has a pecuniary interest.

14 But if we're --

09:44AM 15 THE COURT: When you say "this Court," you're
16 talking about Local Rule 7.1-1?

17 MR. BERNSTEIN: Correct, Your Honor.

18 THE COURT: Sorry to interrupt. Go ahead.

19 MR. BERNSTEIN: Yeah, no. I mean, ultimately, this
09:45AM 20 comes down to what you're comfortable with, in the context of
21 the local rule. I mean, we -- this is -- we're not at the
22 recusal stage. This isn't a motion for recusal. This is just
23 to get you the information so you're comfortable, so we're
24 comfortable, really so everyone is comfortable, that there's no
09:45AM 25 bias, there's no appearance of bias. There's nothing else.

1 And all we're asking for right now is for there to
2 be an identification of the actual entities that have an
3 interest in this litigation, a financial pecuniary interest in
4 this litigation. And the actual entities that do are -- it's
09:45AM 5 not the holding company, it's not the plaintiff, it's these 11
6 individuals. They're the ones who are going to get the actual
7 funds from the judgment, from the litigation. They're the ones
8 who are going to spend it. These are the 11 that are actually
9 critical.

09:46AM 10 And to the extent you're going to apply a 10 percent
11 rule, it should be applied to these 10 percent -- to these 11
12 companies. Because they are the owners of, effectively --
13 they're the owners of Entropic Holdings. They're effectively
14 the indirect owners of the plaintiff, Entropic Communications.

09:46AM 15 THE COURT: So for recusal purposes -- taking a step
16 back and putting this case aside, in general, what -- it's
17 publicly traded entities that are a big concern. Perhaps not
18 the only concern, but the biggest concern; right?

19 There was a big scandal, if I can call it that, a
09:46AM 20 few years ago where there were a number of district judges who,
21 turned out, they or family -- close family members owned stock,
22 sometimes very little stock, in companies that were litigants,
23 that were parties in cases appearing -- cases over which those
24 judges presided; correct?

09:47AM 25 MR. BERNSTEIN: I remember, Your Honor.

1 THE COURT: Now the reason the disclosure rule
2 exists, on its face, is to enable the Court to evaluate
3 possible disqualification. Shouldn't the disclosure -- so
4 you've got this 10 percent threshold that's built into the
5 federal rules. You've noted there's no 10 percent set forth in
6 the local rule. But where I'm going with this is, isn't the
7 concern publicly traded companies?

8 I mean, if there's some obscure limited partnership
9 that nobody's ever heard of because it's kind of secret and you
10 have to know the special handshake to become a member of it --
11 I'm not saying that's this case, but -- and that's the funder
12 and holds a pecuniary interest in the outcome of some case, why
13 does the judge care?

14 Again, if it's not an entity that the judge or the
15 judge's family has any affiliation with, why does that need to
16 be publicly disclosed?

17 MR. BERNSTEIN: So I agree that the concern is more,
18 and maybe much more, when we're talking about a public company.
19 But, Your Honor, we don't know anything about these 11
20 entities. What if a public company actually owned 10 percent
21 or more of one of these companies? I mean, we have not seen --
22 they have not disclosed who actually owns these companies.

23 Or what -- what if it's -- this is not maybe
24 specifically an issue, but what if your next-door neighbor,
25 what if your good friend was the owner -- 25 percent owner of

1 one of these companies?

2 The point is to provide you with the list, so you
3 can review this and you can make a decision. And it very well
4 might be the case, Your Honor, that you look at all this stuff
09:49AM 5 and you're, like, "I have nothing to do with this. I don't
6 know any of this. I don't own any stock. My family doesn't
7 own any stock." That might be the result.

8 But we think the purpose of 7.1-1 is to give you the
9 information so you can make that decision. So in six months or
09:49AM 10 a year, there's some discovery taken and it turns out that, no,
11 look, there is someone here, and effectively all decisions you
12 have made in the case before then are going to be called into
13 question. It's better to deal with this now with the
14 disclosure required by Local Rule 7.1-1.

09:50AM 15 And I do -- Your Honor, you jokingly talked about
16 the secret handshake and stuff like that. And it was a good
17 joke. I chuckled here. But it's kind of -- it's kind of one
18 of the overarching issues here, is that Fortress -- Fortress is
19 involved in this whole process somehow. Nobody knows exactly
09:50AM 20 what they're doing, because those guys are smart. They're
21 clever. They set up shell companies. They create all these
22 LLCs and LLPs to hide who is actually bringing these
23 litigations.

24 THE COURT: So why does that matter? It matters --
09:50AM 25 I can answer -- let me -- it's kind of a rhetorical question,

1 at least in part.

2 It matters, in part, because of recusal purposes.

3 If there's some company that I have stock in who is involved in
4 the Fortress group of entities, yes, that's interesting for
09:51AM 5 recusal purposes. It has to be considered. So that's one
6 reason that it matters; right?

7 I think you've identified another reason that
8 matters is for jury selection purposes. We need to know if one
9 of the prospective jurors has a pecuniary interest in the case.

09:51AM 10 He or she should not sit as a juror.

11 MR. BERNSTEIN: Same for the special master,
12 Your Honor.

13 THE COURT: Okay. But where do we draw the line? I
14 think your -- in your perfect world, I would issue an order
09:51AM 15 saying, "Plaintiff, identify every person and entity that has a
16 pecuniary interest in the outcome of this case."

17 Well, whether it's through an LLC, LLP, the person
18 individually -- what if it's a corporation? What if it's a
19 nonpublicly traded corporation? Do you want to know the owners
09:52AM 20 of that corporation?

21 MR. BERNSTEIN: So, Your Honor, that's a great
22 question. And I think in an ideal world, yes, I'm sure my
23 client would love to go all the way, no limitation at all. But
24 I think we can actually use the 10 percent number, and we just
09:52AM 25 apply it to the actual --

1 THE COURT: So 10 percent of the plaintiff or
2 10 percent --

3 MR. BERNSTEIN: No. 10 percent -- from our view,
4 the actual owners of the -- you know, this -- the owners of the
09:52AM 5 plaintiff, the people who are going to receive the pecuniary
6 interest are the 11 members. And so Entropic should have to
7 identify any individual or entity that owns 10 percent of any
8 one of those 11 companies. Or if they own, like, 5 percent
9 here or 6 percent of another one, if in total it reaches more
09:53AM 10 than 10 percent, they also should be identified.

11 THE COURT: And that's for recusal purposes?

12 MR. BERNSTEIN: That is for recusal purposes. I
13 mean, it is primarily for recusal purposes. There is also this
14 overarching transparency in your courtroom and everyone else's
09:53AM 15 courtroom, but this is -- as you pointed out, Local Rule 7.1-1
16 is a rule that is meant to deal with recusal. And we think you
17 need the information that the rule requires. That's all we're
18 actually asking for.

19 We're actually cutting it back a little bit because
09:53AM 20 we would -- in light of your tentative and the Northern
21 District of California VLSI case, we'd be okay with that. 10
22 percent of the members, 10 percent -- anyone or any entity that
23 owns 10 percent or more of one of these members -- or, you
24 know, they own 10 percent of one or more of these members, they
09:54AM 25 have to be identified.

1 I think that's actually what the Court in the
2 Northern District of California VLSI case was suggesting.
3 That's the top of page 6 of your tentative.

4 THE COURT: Okay. Anything else?

09:54AM 5 MR. BERNSTEIN: Yes. So you actually, through that
6 discussion, got rid of one -- the point of clarification, which
7 is Point 2 in your proposed order.

8 The other thing is this -- you cited in the
9 tentative to this *GoTV Streaming v Netflix* case to, I think,
09:54AM 10 narrow a little bit what was required to be disclosed. And
11 respectfully, the DISH defendants disagree that that case
12 really is on point.

13 THE COURT: Judge Kewalramani was dealing with it in
14 a discovery context, and one of the pieces that he looked at
09:55AM 15 was Local Rule 7.1-1.

16 MR. BERNSTEIN: So -- correct. So the discovery
17 dispute, Your Honor, actually related to whether work
18 product -- attorney work product related to these litigation
19 funders had to be produced. So that's different from what's at
09:55AM 20 issue here.

21 But the -- what's at issue here is the
22 identification of entities or individuals. And in the Netflix
23 case, in a supplemental response to an interrogatory, or second
24 or fifth response to a supplemental interrogatory, the
09:55AM 25 plaintiff actually identified the litigation funders.

1 So those actual litigation funders were identified
2 to at least the defendant. So that's different here, where
3 we're fighting over identification of relevant entities.

4 But I think more importantly, the Netflix case
09:56AM 5 related to litigation funders. Like, those are -- I'm sure
6 from private practice, you remember those are entities where
7 you want to, you know, file a case or pursue a litigation, you
8 don't have any money. You go find these people and they say,
9 "Yeah, here's \$2 million. We want a 20 percent cut of this."

09:56AM 10 That's not what these 11 companies are that own
11 Entropic Holdings. They're actual owners of Entropic Holdings
12 that ultimately get, you know, paid based on the results of the
13 litigation. And so I think that's a major distinction. We're
14 talking about, at least indirectly, who owns the plaintiff in
09:56AM 15 the context of our case, not litigation funders. We're not
16 talking about random third parties who only have a little cut
17 of the litigation.

18 THE COURT: So are you talking about champerty?

19 MR. BERNSTEIN: Yes.

09:57AM 20 THE COURT: So champerty used to be forbidden, but
21 there are a bunch of exceptions. One of the, I think, earliest
22 exceptions arose from counsel taking a case on a contingency.
23 That technically, I think, violates champerty rules, historic
24 champerty rules. But that was ultimately permitted for policy
09:57AM 25 reasons.

1 But I think a big distinction was that counsel --
2 counsel had to be acting in the best interest of the client.
3 And it was the client's decision whether to continue with the
4 litigation, whether to settle, how much to settle for. That
09:57AM 5 was strictly a client decision. And I think for a policy
6 reason, that's why American courts -- jurisdictions permitted
7 this violation of historical champerty rules.

8 Now, in the litigation funding context, a big issue
9 that arises is who controls the litigation. And is that where
09:58AM 10 you're going, that you think that these 11 -- let's take it
11 with respect to this case. Your concern is these 11 investment
12 funds, or maybe Fortress itself or the individuals who control
13 Fortress, actually control -- are making decisions in this case
14 and you think that you're entitled to know who that is?

09:58AM 15 MR. BERNSTEIN: Yes. That's part of it for sure,
16 Your Honor. We don't know. Nobody knows. That's part of the
17 web that Fortress casts, is that who's actually ultimately
18 making decisions?

19 I mean, there's a declaration from Mr. Teksler that
09:58AM 20 says, "Yeah, we're in charge of this." But the reality is, is
21 they don't -- those individuals, the company, the plaintiff --
22 the money, the judgment, the settlement amounts, it's going
23 elsewhere. And so I think a reasonable conclusion one could
24 make is that other people are making the decisions because
09:59AM 25 they're the beneficiary of everything that happens.

1 THE COURT: Okay. Fair enough. And so what? So
2 there's a Mr. Smith or Ms. Jones or whatever who's making these
3 decisions completely unknown to any defendant. So what?

4 MR. BERNSTEIN: Yeah. So this is -- in the -- this
09:59AM 5 was really -- my point was really just to distinguish between a
6 third-party litigation funder that was at issue -- I mean, it's
7 just a different ball game, from my standpoint, to be something
8 like that as opposed to a company -- the actual owners -- the
9 owners of the holding company, the shell holding company, and
10:00AM 10 the owners of, indirectly, the plaintiff.

11 THE COURT: So are you making the distinction
12 between, like you say, a litigation funder who enjoys the
13 upside, if there is one, but does not control the litigation
14 versus a litigation funder who does control the litigation
10:00AM 15 who's calling the shots?

16 MR. BERNSTEIN: I mean, I think that would be a
17 distinction. But I think there's also another distinction as
18 to whether a party that actually owns, even indirectly, a
19 litigant should be disclosed under the local rule, especially
10:00AM 20 when that owner has, you know, significant -- they get the
21 benefit of the payout to the judgment to settlement.

22 I mean, I think to me, at least from my standpoint,
23 actually being an owner of the plaintiff, indirectly or
24 directly, is more significant than just putting in some money
10:01AM 25 into the litigation. I think there should be more obligations

1 on the part of someone who actually owns a litigant. And I
2 think -- I can't -- I can't cite you law exactly on that point,
3 but I think that is part of our process, that there should be
4 some transparency in who's actually bringing a litigation.

10:01AM 5 THE COURT: And there should be because why? It
6 doesn't -- I don't think it affects my recusal process.

7 MR. BERNSTEIN: I think all of us, the U.S. judicial
8 system benefits from transparency and openness in who the
9 litigants actually are, especially plaintiffs. If someone
10 wants to bring a litigation case, great. I mean, say who you
11 are. Say who you really are.

12 THE COURT: But how far does that go? I mean, say
13 in a case a litigant is a nonpublicly traded company. The
14 opposing party doesn't know who within that company is actually
15 calling the shots. Is it the person who's identified as the
16 president or CEO? Is it the COO? Is it the general counsel?
17 Is it the chairman of the board of directors? You don't know.
18 Not you, but opposing party doesn't know.

19 And I don't -- I don't know that we get all deeply
20 concerned about that. That's part of what one gets to do when
21 one has a corporation. Is that not true?

22 MR. BERNSTEIN: As a general proposition, it is.
23 But in our case, we have 11 companies who actually own the
24 shell company who owns Entropic. We're not -- we're not saying
10:02AM 25 go forever. We're -- we want those companies identified and

1 we -- should I stop?

2 THE COURT: Yes. Sorry.

3 Mr. Alekseyeff, good to see you.

4 Mr. Alekseyeff is here for the 11:00 o'clock matter.

10:03AM 5 I think we're past disclosing any names. In fact, I don't
6 think we did at all. So can Mr. Alekseyeff stay?

7 MR. SHIMOTA: I don't object, Your Honor. Entropic
8 doesn't object.

9 THE COURT: Mr. Alekseyeff, you're welcome to stay
10 or go. The issue was, we were discussing some confidential
11 issues in this hearing, but I think we're done doing that. So
12 you're welcome to stay.

13 MR. BERNSTEIN: Just to finish the point, we don't
14 have to look beyond everything. We can just look at our
10:03AM 15 specific case. These 11 companies own the shell company.
16 They -- the -- indirectly, they own the plaintiff. These 11
17 who have a pecuniary interest in the outcome of the litigation,
18 they should be identified as well as anyone who owns 10 percent
19 or more of them.

10:03AM 20 THE COURT: Because?

21 MR. BERNSTEIN: Because that will enable you to
22 fully vet the issue of recusal, Your Honor.

23 THE COURT: Okay. All right. Thank you. I'll give
24 you a brief last word, but we'll see if Mr. Shimota --

10:04AM 25 Am I pronouncing your name right?

1 MR. SHIMOTA: Exactly right, Your Honor.

2 THE COURT: Looks like you're going to argue this.

3 MR. SHIMOTA: I am. Thank you, Your Honor. Thank
4 you for hearing on this issue.

10:04AM 5 To start with, right, I mean -- so we received your
6 tentative ruling last night. What I want to be clear on here,
7 and what we've tried to be clear on from the very beginning, is
8 that while we think our 7.1-1 disclosure was accurate, you're
9 right that this rule is very similar to the Northern District
10 of California's rule here. And what that rule says is
11 interests that are known.

12 And so what we provided in our 7.1 disclosure is
13 what we knew about. And so there is -- you know, there is --
14 what we've learned from a production in another case is that
10:04AM 15 Entropic -- there are these 11 funds that own Entropic
16 Holdings, LLC.

17 THE COURT: Well, I got to tell you, that's not
18 really very compelling. It's not a very compelling argument to
19 me, what you know. Because you certainly can know. I don't
20 know who you're taking your marching orders from, what human
21 being is telling you, "Yes, file this motion. Don't file that
22 motion. Make this argument." There's somebody presumably
23 doing that. And I'm not asking you to disclose that. But the
24 point is he or she, if he or she wants to, can find out this
10:05AM 25 information.

1 MR. SHIMOTA: Getting to the point then -- so
2 cutting to the chase, I provided, you know, your ruling to --
3 Fortress has its own counsel, who I have been in communication
4 with. I provided your ruling to them, Your Honor. We can --
10:05AM 5 by the 23rd, we can certainly disclose the funds that own more
6 than 10 percent of Entropic Holdings. And we --

7 THE COURT: Sounds like that would be two.

8 MR. SHIMOTA: Two companies, right. In addition to
9 that -- the issue is, as I understand it, that -- these are
10:05AM 10 private funds. Well, let me take one step back.

11 DISH tries to paint this kind of James
12 "Bondian-like" dark story, like this web of secret Fortress.
13 If you go to the SEC website and type in "Fortress Investment
14 Group," you'll find a Form ADV document that's 2,000 pages long
10:06AM 15 that describes exactly what Fortress does and identifies each
16 and every fund that they manage, including those that own
17 Entropic Holdings. They're listed as private funds.

18 It's a matter of public record that these public
19 funds are typically owned by pension funds, sovereign wealth
10:06AM 20 funds, high net worth individuals. So the issue there, that I
21 believe we will be able to resolve, is that there are times
22 where certain investors in these funds have confidentiality
23 obligations with Fortress.

24 So what Fortress's lawyers are doing at this moment
10:06AM 25 is trying to make sure that in order to comply with this

1 Court's order, the tentative ruling, that it will not run afoul
2 of any confidentiality obligations. I don't even know if there
3 is an individual or entity that owns more than 10 percent of
4 these two funds. In all likelihood, there probably isn't, the
10:07AM 5 way funds are typically structured, but I can't represent that
6 to Your Honor.

7 But my understanding is that we would be able to
8 advise you by next week whether there would be an issue with
9 compliance with that. Fortress will tell me, and I would
10:07AM 10 advise you. And we will -- we want to move forward and put
11 this issue behind us and move forward in the merits of the
12 case. And so we believe that we will be able to comply with
13 your order by June 23rd, your tentative ruling, to the extent
14 that it continues on.

10:07AM 15 THE COURT: Where does the -- do you know where the
16 10 percent rule comes from that's in Federal Rules of Civil
17 Procedure 7.1?

18 MR. SHIMOTA: My understanding is it has to do with
19 control, Your Honor. That 10 percent is a number where people
10:07AM 20 felt that if someone owns 10 percent in a publicly held
21 corporation, that that is a sufficient amount where they would
22 be able to exercise some degree of control over the
23 corporation. And as a consequence, I think that translates
24 well to this case as well.

10:08AM 25 And I think your math is correct. Right? I mean,

1 if someone owns 10 percent of one of these funds, then they're
2 not in a position even -- I mean, even if they wanted to -- to
3 control anything in this case. And DISH itself concedes that
4 for recusal purposes, indirect investments do not require this
10:08AM 5 Court to recuse themselves.

6 And I don't want to intrude on your own personal
7 financial dealings, but I assume that if you or a member of
8 your family were invested in one of these Fortress funds, you
9 likely would know it. And so I suspect that this is an issue
10:08AM 10 that hopefully we can move on from.

11 There's a few other points, right? For example,
12 counsel repeatedly, repeatedly called Entropic Holdings a shell
13 corporation. There is no record evidence whatsoever that this
14 is a shell corporation at all. None. There's the LLC
10:09AM 15 agreement, which has been produced in this matter. We provided
16 a declaration for Mr. Teksler.

17 There's no competing evidence whatsoever that this
18 is a shell corporation or that there is anything nefarious
19 going on. It is just counsel -- counsel say-so. I think there
10:09AM 20 should be evidence before you start making charges of that
21 kind, that there's -- this company is just a sham or a shell or
22 something like that.

23 THE COURT: What about publicly traded entities? I
24 mean, I'm contemplating asking for an identification of any
10:09AM 25 publicly traded entities that are in any way a part of the

1 ownership of Entropic Holdings, LLC.

2 MR. SHIMOTA: I mean, any public -- a corporation
3 that owns any percentage of any of these funds?

4 THE COURT: Well, for recusal -- yes, for recusal
10:10AM 5 purposes. I think that's an interesting thing for a Court,
6 generally, to know. I mentioned earlier the issue that arose a
7 few years ago where it turned out that district judges owned a
8 tiny piece of entities that were litigating before them. So
9 using that, perhaps that would be an important thing to -- for
10:10AM 10 plaintiff to disclose.

11 If Acme Corporation has -- you know, owns 1 percent
12 of 1 percent of one of the private investment funds, I would
13 hate to litigate this case heavily and make rulings and then
14 come to find out that I own stock in Acme Corporation and Acme
10:10AM 15 Corporation was in the corporate ownership here.

16 MR. SHIMOTA: Yeah, I mean, I think no party
17 disputes here, at least DISH does not dispute, that an indirect
18 investment in a fund is not something that requires recusal.
19 Their briefing says that.

10:11AM 20 So if Acme Corporation owned 1 percent of one of
21 these funds that's managed by Fortress, that's the type of
22 indirect investment that does -- you don't control that,
23 Your Honor. I mean, that's fund -- you know, things that are
24 moving around. And so it wouldn't --

10:11AM 25 THE COURT: But I may benefit. If Acme

1 Corporation -- if you win big in this case and Acme
2 Corporation, you know, enjoys significant profits because of
3 it, I could benefit from that, if I owned Acme Corporation and
4 Acme Corporation was in the ownership structure.

10:11AM 5 So is that not something that ought to be disclosed,
6 publicly traded entities?

7 MR. SHIMOTA: I just think that that's the type of
8 indirect investment that is not required to -- that would not
9 require your recusal.

10:11AM 10 THE COURT: So you think no --

11 MR. SHIMOTA: I mean, so let's say, for example,
12 that there was --

13 THE COURT: Hold on. I'm asking a different
14 question.

10:12AM 15 MR. SHIMOTA: Sorry. Okay.

16 THE COURT: Is that a knowable -- how easily
17 knowable is that for you? And are there any? I mean, you --

18 MR. SHIMOTA: Candidly, I don't represent Fortress
19 in this matter. I'm dealing with Fortress's counsel. I talked
20 with them this morning. I don't know. My expectation and
21 belief is that there is no public corporation that is owning
22 any of these funds. But I simply don't know, Your Honor.

23 And I think to the extent that there was a public
24 corporation that owned, you know, 1 percent of one of these
10:12AM 25 funds, I think that's so attenuated that it's not -- you

1 know -- it's just, where does it end?

2 Candidly, I think -- you know, I've seen your
3 disclosures, Your Honor, and you -- there's certain funds -- I
4 think it's more likely that one of your funds owns one of the
10:12AM 5 plaintiffs in this case. And we don't have a problem with
6 that. We don't think that that's -- or one of the defendants,
7 excuse me. You know, they own stock in Comcast or someone like
8 that, rather than one of these funds. And we don't think
9 that's an issue.

10:13AM 10 And to even emphasize things, DISH talks a lot about
11 how transparency and how this -- you know, sort of the
12 public -- their codefendant in the consolidated part of this
13 case up to Markman, DIRECTV, is owned 33 percent by a private
14 equity fund; right? They're very similar to a Fortress
10:13AM 15 situation.

16 DISH hasn't said a single word about that. Who owns
17 DIRECTV? Who owns these funds? The public needs to know to be
18 sure about the case. It's, rather, this is just an effort --
19 you know, DISH is kind of -- DISH -- Mr. Bernstein's colleague,
10:13AM 20 Ms. Tessar, last time she was here before you in court, she
21 wasn't talking about recusal, she was talking about discovery.

22 She said, "We were seeking the ownership who owns --
23 who owns Entropic." And she said that "We sought this in
24 discovery and they stiffed us." That was her quote. And so it
10:14AM 25 wasn't -- it's never been about ethics or recusal. I suspect

1 there's enough here for Your Honor to determine whether or not
2 you can ethically proceed with this case. It's always been
3 about discovery and the types of -- the story they want to
4 weave about the nefarious Fortress and this secret web of shell
10:14AM 5 companies.

6 THE COURT: So I understood Mr. Bernstein to be
7 making the argument that plaintiff should be compelled to
8 disclose the identity of entities that are controlling the
9 course of the litigation as opposed to merely funding the
10:14AM 10 litigation and then sort of passively finding out whether
11 they're going to -- whether the investment is going to pay off
12 or not.

13 So there's -- I understood him making -- to be
14 making a distinction between sort of passive investing and
10:14AM 15 enjoying an upside versus actually controlling the litigation.
16 And those who control the litigation ought to be disclosed.

17 Do you want to respond to that?

18 MR. SHIMOTA: Well, as I understand the GoTV case,
19 the Court there said that 7.1-1 deals with recusal. So the
10:15AM 20 Court didn't require production of, you know -- under that
21 rule, of the identity of the litigation funder.

22 There are times where for standing purposes, for
23 example, you may be interested in who actually controls the
24 litigation, who has, quote/unquote, all substantial rights in
10:15AM 25 this matter. There's never been any argument made that anyone,

1 other than Entropic, my client, is who controls this
2 litigation.

3 You know, Mr. Teksler provided a -- Mr. Teksler is
4 an executive who's worked at Apple, who's worked at HP, who's
10:15AM 5 been CEO of lots of corporations. He's provided testimony
6 under oath to this Court that he's the one running the show
7 here. There's no evidence whatsoever in the record that
8 there's some secret entity that's running the show here.

9 And so -- and I agree with you 100 percent that if
10:16AM 10 they want to make an argument and that there is a valid basis
11 that there's someone else, for standing purposes, that needs to
12 be discovered, that's a different issue, an entirely different
13 issue than whether or not you need to recuse yourself in this
14 matter.

10:16AM 15 You know, they can pursue that, but that doesn't
16 have anything to do with the public disclosure of who owns, you
17 know, certain private funds managed by Fortress.

18 THE COURT: So I was talking more, I think, about
19 the champerty issue. Do you want to address that?

10:16AM 20 MR. SHIMOTA: Yeah. So the issue, you know, in
21 particular as to whether or not, you know -- for litigation
22 funders typically, typically -- I don't know what the
23 litigation funding arrangement was in the GoTV case, but they
24 provide nonrecourse funds. But nevertheless, the plaintiff
10:16AM 25 still retains the authority to settle. They simply -- they

1 have full authority to resolve the case or not.

2 And I don't still believe that under the rules that
3 someone who has the ability to, you know, necessarily control
4 the case in some way has a pecuniary interest. They may. They
10:17AM 5 probably would, but I don't know.

6 So I don't believe that under 7.1-1 that there is
7 any requirement to disclose, you know, someone else who's in
8 control of the case. But I guess as a practical matter, I
9 would say, Your Honor, there is no one else to disclose.

10:17AM 10 Entropic controls Entropic's day-to-day operations.

11 Mr. Teksler has provided testimony. I'm sure he'd be happy to
12 come here to this court, if you'd like, to say that he runs the
13 company and he's in control of Entropic, he makes the decisions
14 for it.

10:17AM 15 THE COURT: Okay.

16 MR. SHIMOTA: I don't know if you have any further
17 questions. Thank you for taking the time, Your Honor.

18 THE COURT: No, that's it. I'll give Mr. Bernstein
19 a chance to reply, if he'd like to.

10:17AM 20 MR. BERNSTEIN: Yeah, just very briefly, Your Honor.

21 So from our standpoint, their control and whether
22 there's a pecuniary interest, financial upside, those actually
23 are two separate things, either one of which would give rise to
24 potential recusal. And so I just wanted to clarify our
10:18AM 25 position.

1 The Local Rule 7.1-1 says if you have a pecuniary
2 interest, identify yourself. But I think if there is --
3 someone is actually -- like, for example, Fortress, like,
4 what -- they're involved in this stuff. What are they doing?
10:18AM 5 We don't know. They've identified Fortress. Right now we're
6 okay with this. Really our concern is with these other
7 companies and what's going on with these other companies. So I
8 just wanted to clarify that distinction.

9 And beyond that, I mean, I appreciate -- I mean, I
10 hadn't thought about champerty in a long time, so I appreciate
11 you bringing it up and giving me an opportunity to talk about
12 it with you. Thank you, Your Honor.

13 THE COURT: You're welcome.

14 Okay. I'm going to take this motion under
10:19AM 15 submission and think about it a little bit more in view of the
16 argument, which I deeply appreciate.

17 Counsel, again, thank you for traveling here for
18 this hearing. I will see you all on the 21st of July, I think
19 for a number of proceedings, as we have discussed. I look
10:19AM 20 forward to receiving the special master stipulation and
21 declaration on the satellite case, and then hope to get that
22 order entered. And look forward to seeing the Rule 26(f)
23 reports and hopefully stipulation on consolidation in the MOCA
24 and cable cases. And look forward to seeing the supplemental
10:19AM 25 briefing on the 101 motion. And hopefully we can get the

1 12 (b) (1) and 12(b) (6) motions teed up for hearing on July 21st
2 as well. Again, thank you.

3 Anything else? Anything we didn't cover? Am I
4 missing something?

10:20AM 5 MR. SHIMOTA: No, Your Honor.

6 MS. GOODRICH: No, Your Honor.

7 THE COURT: Okay. Counsel, thank you. Have a
8 great -- I guess it's Friday, so have a great weekend. And
9 I'll see you next time.

10:20AM 10 **(The parties collectively responded "Thank you.")**

11 THE COURTROOM DEPUTY: All rise. This Court is in
12 recess.

13 **(Proceedings conclude at 10:20 A.M.)**

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